



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Marc Erik Elias
700 13th Street, NW
Suite 600
Washington, DC 20005-3960

MAR 10 2017

RE: MUR 7067

Dear Mr. Elias:

On May 25, 2016, the Federal Election Commission notified your clients, Patrick Murphy, Thomas Murphy, Jr., and Coastal Construction Group of South Florida, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time. Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on March 6, 2017, found no reason to believe that Patrick Murphy violated 52 U.S.C. §§ 30116(f) or 30118(a) of the Act or that Coastal Construction Group of South Florida, Inc., or Thomas Murphy, Jr., violated 52 U.S.C. §§ 30116(a) or 30118(a) of the Act. The Commission closed the file on the same day.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Christopher L. Edwards, the attorney assigned to this matter, at (202) 694-1568.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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2
3 RESPONDENTS: Friends of Patrick Murphy and Brian Foucart in his MUR 7067
4 official capacity as treasurer
5 Patrick E. Murphy
6 Floridians for a Strong Middle Class and Jennifer
7 May in her official capacity as treasurer
8 Thomas P. Murphy, Jr.
9 Coastal Construction Group of South Florida, Inc.
10

11 **I. INTRODUCTION**

12 The Complaint alleges that U.S. Representative Patrick Murphy (“Rep. Murphy”), a
13 candidate for the U.S. Senate in Florida in 2016,¹ unlawfully coordinated with Floridians for a
14 Strong Middle Class (“FSMC”), an independent-expenditure only committee (“IEOPC”), in
15 violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 **A. Factual Background**

18 FSMC registered with the Commission as an IEOPC in April 2015.² The Complaint
19 alleges that FSMC was formed to support Rep. Murphy’s senatorial campaign and that FSMC
20 “has been primarily funded by [Rep.] Murphy’s own company and a family member with whom
21 he has financial ties. . . .”³ The Complaint points to a \$200,000 contribution to FSMC on
22 December 18, 2015, from Thomas Murphy, Jr. (“Thomas Murphy”), Rep. Murphy’s father, and a

¹ Rep. Murphy filed his Statement of Candidacy on March 23, 2015. .

² FEC Form 1, Statement of Organization, Floridians for a Strong Middle Class (filed Apr. 29, 2015), available at <http://docquery.fec.gov/pdf/051/15951233051/15951233051.pdf>. In its statement, FSMC represented that it, “intends to make independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.” *Id.*

³ Compl. at 1.

1 \$300,000 contribution to FSMC on March 31, 2016, from Coastal Construction Group of South
2 Florida, Inc. ("Coastal Construction").⁴ Thomas Murphy is the Chairman and CEO of Coastal
3 Construction,⁵ and Rep. Murphy reportedly owns an interest in the company that is worth
4 between \$1,000,001 and \$5,000,000.⁶

5 The Complaint alleges that those contributions from Thomas Murphy and Coastal
6 Construction evidence coordination between Rep. Murphy's authorized campaign committee,
7 Friends of Patrick Murphy (the "Committee"), and FSMC because those contributors are closely
8 connected to Rep. Murphy.⁷ The Complaint focuses on the financial ties that exist between Rep.
9 Murphy and the contributors due to Rep. Murphy's ownership interest in Coastal Construction.⁸

10 While the Respondents admit that the contributions were made, they deny that any
11 coordination has occurred between FSMC and the Committee.⁹ In support, Thomas Murphy
12 submitted a declaration swearing that he alone made the decision to contribute his personal
13 funds, and that he made the decision to make a contribution from Coastal Construction in his
14 capacity as Chairman and CEO, in both cases independent of and without consultation with or

⁴ *Id.* On September 27, 2016, after the Complaint and responses were received, Thomas Murphy donated another \$250,000 to FSMC. 2016 Oct. Quarterly Report at 11, Floridians for a Strong Middle Class (Oct. 15, 2016). At the time of its 2016 Pre-General Election Report, FSMC reported total receipts of \$2,440,200. *See* 2015 Year-End Report at 5, Floridians for a Strong Middle Class (Jan. 31, 2016); 2016 Pre-General Report at 5, Floridians for a Strong Middle Class (Oct. 27, 2016).

⁵ *See* Response of Rep. Murphy, Thomas Murphy, and Coastal Construction ("Murphy Resp."), Decl. of Thomas Murphy, Jr., ¶ 1 (July 18, 2016).

⁶ 2015 Congressional Financial Disclosure Report, Rep. Patrick Murphy, Filing ID #10010493 (May 16, 2016); *see also* Compl. at 2.

⁷ Compl. at 1-2.

⁸ *See id.*

⁹ FSMC Resp. at 2 (June 23, 2016); Murphy Resp. at 2-3. The Committee did not respond to the Complaint.

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1 the knowledge of Rep. Murphy or his Committee.¹⁰ Thomas Murphy further avers that he has
2 not otherwise had any involvement with FSMC “regarding any communications or ‘independent
3 expenditures’ that they have made or may or may not make in the future.”¹¹ Respondents also
4 state that, at the time they filed their responses, FSMC had not yet made any public
5 communications in support of Rep. Murphy.¹² A review of FSMC’s FEC filings supports this
6 assertion. After the responses were filed, FSMC made several independent expenditures in
7 support of Rep. Murphy’s candidacy and filed independent expenditure reports disclosing those
8 independent expenditures.¹³

9 B. Legal Analysis

10 The Act prohibits any person from making, and any candidate or committee from
11 knowingly accepting, contributions in excess of the limits stated in 52 U.S.C. § 30116.¹⁴ In
12 addition, IEOPCs are prohibited from making contributions to federal candidates,¹⁵ and
13 candidates and their authorized committees are prohibited from accepting “soft money”
14 contributions not subject to the limits and prohibitions of the Act.¹⁶

¹⁰ Murphy Resp., Decl. of Thomas Murphy, Jr. ¶¶ 5-6.

¹¹ *Id.* ¶ 4.

¹² FSMC Resp. at 2; Murphy Resp. at 3.

¹³ See *Floridians for a Strong Middle Class Electronic Filings*. See, e.g., *48 Hour Independent Expenditure Reports* (Aug. 4, 2016 & Oct. 11, 2016).

¹⁴ 52 U.S.C. § 30116(a), (f).

¹⁵ See 52 U.S.C. § 30118(a) (prohibition on corporate contributions); 11 C.F.R. § 114.2(a) (same); Advisory Op. 2010-11 (Commonsense Ten).

¹⁶ See 52 U.S.C. § 30125(e)(1).

1 For purposes of the Act, an expenditure is coordinated if it is made in cooperation,
2 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's
3 authorized committee, or a political party committee.¹⁷ Any expenditure that is coordinated is an
4 in-kind contribution to the candidate or committee with which it is coordinated.¹⁸ An
5 expenditure for a communication is coordinated when the communication:

- 6 (1) Is paid for, in whole or in part, by a person other than that
7 candidate, authorized committee, or political party committee;
8 (2) Satisfies at least one of the content standards¹⁹ in paragraph
9 (c) of [§ 109.21]; and
10 (3) Satisfies at least one of the conduct standards²⁰ in paragraph
11 (d) of [§ 109.21].²¹

12 While the Complaint alleges coordination between the Committee and FSMC, it does not
13 identify any specific communications or other expenditures that were supposedly coordinated.
14 In fact, the information available in the record before the Commission indicates that FSMC had
15 not yet made any public communications when the Complaint was filed. While FSMC paid for

¹⁷ 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i).

¹⁸ *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

¹⁹ The content standard is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the candidate's primary election; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

²⁰ The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. 11 C.F.R. § 109.21(d).

²¹ 11 C.F.R. § 109.21(a).

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1 independent expenditures in support of Murphy after the Complaint was filed, the available
2 information regarding those expenditures does not evidence any violations of the Act.

3 The payments for FSMC's advertisements were disclosed by FSMC as independent
4 expenditures in support of Rep. Murphy, so they appear to satisfy the payment and content
5 prongs of the Commission's coordination test,²² but the factual record does not support a
6 conclusion that the conduct prong may have been satisfied.²³ The fact that Thomas Murphy and
7 Coastal Construction contributed to FSMC, and that Rep. Murphy has an ownership interest in
8 Coastal Construction, without more, does not appear to satisfy any of the conduct standards.²⁴
9 This conclusion is further supported by Thomas Murphy's declaration that Rep. Murphy and the
10 Committee were not involved in his decisions to contribute and that he has not otherwise had any
11 involvement with FSMC regarding any communications.²⁵

12 The Commission therefore finds no reason to believe that the Respondents violated the
13 Act or Commission regulations as a result of the activities described in the Complaint.

²² See 52 U.S.C. § 30101(17) ("independent expenditure" defined as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized committee, or their agents); 11 C.F.R. § 109.21(c)(3) (a communication will satisfy the content standard if it expressly advocates for the election or defeat of a clearly identified candidate for Federal office).

²³ See 11 C.F.R. § 109.21(d).

²⁴ See *id.*, F&LA at 5-9, MUR 6668 (Chen) (finding no reason to believe where the brother of a federal candidate provided \$765,000 of \$1,115,000 received by an IEOPC that supported the candidate.)

²⁵ Murphy Resp., Decl. of Thomas Murphy, Jr. ¶¶ 3-6.